

**National Association of Letter Carriers, AFL-CIO; Branch 758, National Association of Letter Carriers, AFL-CIO (United States Postal Service) and Mark Zysk and Keith L. Kloock and Harold R. Staley Jr. and Michael P. Pickett.** Cases 7-CB-10408(P), 7-CB-10849(P), 7-CB-11186(P),<sup>1</sup> 7-CB-10707(P), 7-CB-10779(P), and 7-CB-10828(P)

July 22, 1999

# DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX  
AND BRAME

On December 29, 1997, Administrative Law Judge Jerry M. Hermele issued the attached decision. Charging Party Zysk filed exceptions and a supporting brief,<sup>2</sup> and the General Counsel filed cross-exceptions, a supporting brief, and an answering brief to Charging Party Zysk's exceptions. Charging Parties Zysk, Kloock, and Staley each filed an answering/reply brief to the General Counsel's cross-exceptions and answering brief. The Respondent Union filed a reply brief to Charging Party Zysk's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions, cross-exceptions, and briefs and has decided to affirm the judge's rulings,<sup>3</sup> findings, and conclusions as modified and to adopt the recommended Order as modified.

As more fully described by the judge, on various dates since December 1994, the Charging Parties individually have requested copies of their grievance files maintained by the Union to verify that their grievances were being properly processed. Since 1989, Charging Parties Zysk, Kloock, Staley, and Pickett have filed at least 286, 250, 217, and 21 grievances, respectively. The Union furnished only some of the requested information to the Charging Parties. The Union notified Charging Party Zysk that his request would place an undue hardship on the Union in terms of time and money spent on investigating, researching, and copying the large number of grievance files that he had requested. The Union never told the other Charging Parties why they could not be furnished copies of their grievance files.

<sup>1</sup> The judge inadvertently omitted Case 7-CB-11186(P) from the list of consolidated cases in the case caption of his decision.

<sup>2</sup> We grant the Respondent's request to strike the attachment to Charging Party Zysk's exceptions because the document was never made part of the record in the hearing.

<sup>3</sup> Charging Party Zysk argues that the judge erred by disallowing certain questions on cross-examination seeking information from President Nusser concerning the Union's financial assets and its officer's salaries. We find no merit in this argument because the Union's financial status is irrelevant to whether the Union violated Sec. 8(b)(1)(A) as alleged by the complaint. Therefore, the judge's ruling excluding this questioning of Nusser was proper.

The judge found that the Union violated Section 8(b)(1)(A) of the Act by failing to provide the Charging Parties with access to their grievance files, but he found no violation of Section 8(b)(1)(A) based on the Union's failure to provide photocopies of such files. In paragraph 2(b) of his recommended Order, the judge, however, directed that the Union must provide copies of their grievance files to the Charging Parties on their request and at their cost. The only dispute among the parties relates to the judge's dismissal of the photocopying requests allegation and his allocation of the photocopying costs to the Charging Parties.<sup>4</sup>

Regarding these issues, the General Counsel argues that the judge's findings of fact are inconsistent with his Conclusions of Law and recommended Order. Specifically, the General Counsel asserts that while the judge correctly found the large volume of grievances filed by the Charging Parties had nothing to do with their right of access to their grievance files maintained by the Union, he erroneously determined that the number of documents requested by the Charging Parties was relevant in ascertaining whether they were entitled to photocopies of such files from the Union. In the General Counsel's view, the number of documents is relevant only in a compliance determination as to who should bear the cost for providing the requested documents. The General Counsel contends that the situation in *Letter Carriers Branch 529 (Postal Service)*,<sup>5</sup> is virtually identical to this case, and the Board's decision there mandates a reversal of the judge's dismissal of the photocopying allegation and his cost allocation award. The General Counsel urges the Board to hold the Union responsible for any reasonable photocopying costs here.

Like the General Counsel, the Charging Parties take issue with paragraph 2(b) of the judge's recommended Order requiring that they pay for any photocopies of their grievance files. They argue that the Union, as the wrongdoer, should bear the copying costs and that such responsibility will not cause any undue hardship to it.

In response, the Union counters that the judge reasonably allocated the copying costs to the Charging Parties in view of (1) the large number of documents and the significant Union time involved; (2) the lack of any evidence that the Union was not properly processing the Charging Parties' grievances; and (3) the small size and limited resources of the Union. The Union also asserts that *Letter Carriers Branch 529* is distinguishable from the instant case because the photocopying requested by the employee in that case involved only two pieces of paper. Thus, the Union contends that *Letter Carriers Branch 529* does not mandate a result contrary to that reached by the judge in this case where the Charging

<sup>4</sup> The judge also dismissed an 8(b)(1)(A) allegation pertaining to the removal of Charging Party Pickett as the steward.

<sup>5</sup> 319 NLRB 879 (1995).

Parties' requests involve possibly thousands of documents.

In *Letter Carriers Branch 529*, the Board found that a union breached its duty of fair representation by refusing to provide an employee with copies of her grievance forms. We note, as did the judge, the important similarities between this case and *Letter Carriers Branch 529*. In both cases, the documents in question were limited to grievances filed by the requesting employees who had legitimate interests in obtaining copies of their grievances. Likewise, the Union in each case had no countervailing interest (e.g., confidentiality concerns) in refusing to provide the requested documents. Furthermore, the judge in the instant case found that the Union "acted arbitrarily in its policy of file access/copying" when it furnished copies of grievance file documents to certain individuals, and not others, without providing any explanation for the different treatment. Thus, these facts support a finding that the Union's conduct towards the Charging Parties was arbitrary and a breach of the Union's duty of fair representation.

The judge erred by finding no breach occurred because he incorrectly restricted *Letter Carriers Branch 529* to situations where the employee's request for grievance file copies is "extremely limited." It is true that only two pieces of paper were sought by the employee in that case, but in noting the small number of documents requested, the Board did not intend to imply that seeking a larger number would negate finding a breach of the union's duty of fair representation for blanket refusal of the request. Rather, where the record contains no evidence that the requests for grievance files were overbroad, the actual number of documents to be copied has no bearing on whether the employee is entitled to such information by a visual inspection or through photocopying. We believe that the right to photocopy union documents is merely a corollary to the employee's right of access to the documents.<sup>6</sup> Therefore, we reverse the judge and find an additional violation of Section 8(b)(1)(A) because the Union refused to provide photocopies of the grievance files.

Having found the violation, we must decide who is responsible for paying the expense of the photocopies. We agree with the judge that, given the amount of time and expense involved in photocopying the documents requested by the Charging Parties, it is reasonable that they bear copying costs. This allocation of costs is consistent with the Board's practice in analogous hiring hall referral cases where the Board has consistently held the request-

ing employee responsible for payment of reasonable costs for photocopies of voluminous hiring hall records.<sup>7</sup>

Accordingly, we amend the judge's Conclusion of Law no. 3 to include, as an additional violation of Section 8(b)(1)(A) of the Act, the Union's failure to provide photocopies of the requested files to the Charging Parties, and modify the judge's recommended Order.

#### ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that National Association of Letter Carriers, AFL-CIO; Branch 758, National Association of Letter Carriers, AFL-CIO, Wyandotte, Michigan, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

"(a) Refusing to provide any employee or member with access to his or her grievance files, including photocopies."

2. Substitute the attached notice for that of the administrative law judge.

#### APPENDIX

##### NOTICE TO MEMBERS

##### POSTED BY ORDER OF THE

##### NATIONAL LABOR RELATIONS BOARD

##### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to provide any employee or member of Branch 758, National Association of Letter Carriers, AFL-CIO, with access to his or her grievance files, including photocopies.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide Mark Zysk, Keith L. Kloock, Harold R. Staley Jr., and Michael P. Pickett with access to their grievance files.

WE WILL provide Mark Zysk, Keith L. Kloock, Harold R. Staley Jr., and Michael P. Pickett with copies of their grievance files, if they so request, with the cost to be paid by the individual requesting the copies.

NATIONAL ASSOCIATION OF LETTER CARRIERS,  
AFL-CIO; BRANCH 758, NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

<sup>6</sup> See, e.g., *Carpenters Local 35 (Construction Employers Assn.)*, 317 NLRB 18, 21-23 (1995), and *Boilermakers Local 197 (Northeastern State Boilermaker Employers)*, 318 NLRB 205 (1995) (a union's duty of fair representation includes both the obligation to provide access to job referral lists and photocopying of such lists).

<sup>7</sup> See, e.g., *Operating Engineers Local 3 (Kiewit Pacific Co.)*, 324 NLRB 14 (1997), and *Boilermakers Local 197 (Northeastern State Boilermaker Employers)*, 318 NLRB 205, 206 (1995).

*Gary W. Saltzgeber, Esq.*, for the General Counsel.  
*Michelle D. Guerra, Esq. (Cohen, Weiss & Simon)*, of New York, New York, for the Respondent.  
*Mark Zysk*, of Taylor, Michigan, for the Charging Party.  
*Harold R. Staley Jr.*, of Wayne, Michigan, for the Charging Party.  
*Keith L. Kloock*, of Trenton, Michigan, for the Charging Party.  
*Michael P. Pickett*, of Wyandotte, Michigan, for the Charging Party.

## DECISION

### I. STATEMENT OF THE CASE

JERRY M. HERMELE, Administrative Law Judge. This case concerns litigation over litigation: to what degree must a union provide its members with access to, and/or copies of, files that a union maintains in connection with a member's grievance against the United States Postal Service. Four letter carriers—Mark Zysk, Keith L. Kloock, Harold R. Staley Jr., and Michael P. Pickett—filed charges against Branch 758 of the National Association of Letter Carriers (the Union) in 1995, alleging that the Union failed to pursue adequately their grievances against the Postal Service and failed to provide them with access to and/or copies of their grievance files. The General Counsel issued its first complaint against the Union on March 7, 1995, but a settlement agreement was reached in June 1995, in which the Union agreed to provide copies of grievance files. The agreement fell through, however, resulting in a second complaint being issued on May 1996, numerous continuances of the hearing, and finally a third complaint being issued on March 28, 1997. Therein, the General Counsel alleges that the Union failed to provide its members with access to and copies of their grievance files. Also, it alleges that Michael Pickett was improperly removed from his position as a steward in 1995. At long last, this case went to trial in Detroit, Michigan, on July 29-30, 1997, during which the General Counsel called six witnesses, including the four Charging Parties. The Union then called its branch president, Constance Nusser, and national business agent, Ronald Brown, as witnesses. Finally, the General Counsel and Union filed briefs on October 10 and 14, 1997, respectively.

### II. FINDINGS OF FACT

Branch 758 of the National Association of Letter Carriers (NALC) represents just over 100 letter carriers in the following three post offices in the southern suburbs of Detroit: Southgate, Wyandotte, and Riverview, Michigan (Tr. 17–18). Like most NALC locals, Branch 758's officers are full-time letter carriers and the Branch has no separate office or clerical staff (Tr. 252–253, 304). Since 1995, the Branch's old copy machine has been broken and there has not been enough money to buy a new one. So the Branch must pay for its copies elsewhere (Tr. 328–329, 339–340).

Mark Zysk was the president of Branch 758 from 1989 to 1994. He maintained the files of all grievances lodged by letter carriers at his home during this time, including old files dating from the 1970s (Tr. 18–21). Zysk resigned from the Union after a losing campaign for National Business Agent, a position currently held by Ronald Brown (Tr. 112–113, 250). But Zysk stayed on as a letter carrier at the Southgate Post Office (Tr. 17). Zysk's wife also works as a letter carrier at the Southgate Post Office (Tr. 128). John Moskal succeeded Zysk as president in September 1994 (Tr. 27), followed by Constance Nusser

in March 1995 (Tr. 301–302). Keith Kloock worked as a letter carrier from 1987 to May 1994, and was forced to retire by the Postal Service, against his will, in December 1995 because of back problems (Tr. 134–136). Harold Staley Jr. is another letter carrier at Southgate who has held various positions with the Union but lost the 1996 election for branch president to Nusser (Tr. 180–181). Michael Pickett has worked as a letter carrier out of all three post offices represented by Branch 758 but he moved to the nearby Taylor Post Office in July 1996. The employees who work there are represented by Local 2184 (Tr. 220). Zysk, Kloock, Staley, and Pickett are all friends away from work (Tr. 115).

President Moskal reluctantly appointed Pickett to be a Branch 758 steward in February 1995 following a vote of the members that Pickett get the job (Tr. 308). According to the NALC constitution, each branch decides whether stewards are to be appointed by the president or elected by the members, and Branch 758's bylaws follow the former procedure (Jt. Exh. 4; Tr. 240). In September 1995, Pickett addressed a union meeting at which former President Moskal was in the audience. Moskal made derogatory comments about Pickett during the speech. After the speech, Pickett approached Moskal, their conversation became loud, and Pickett said, "You need to walk outside." President Nusser overheard the two men and quickly intervened, preventing anything further from happening. Nusser later removed Pickett as a steward because of this incident (Tr. 162–163, 221–224, 309–311).

Only 10 percent of letter carriers file grievances against management, and usually the maximum number of grievances per letter carrier for a career is 15. But since 1989, Zysk has filed 286 grievances, followed by Kloock's 250, Staley's 217 and Pickett's 21. These totals for Zysk, Kloock, Staley, and Pickett do not include grievances that were settled at Steps 1 or 2, or any class actions (Tr. 258–260). But some grievances filed by a grievant concern the same matter(s) (Tr. 101). When a letter carrier has a problem with management, the steward at the local post office will talk with management first in an effort to resolve the problem. If this is unsuccessful, the steward decides whether to file a step 1 grievance, which may or may not be in writing. Then, a meeting is held with the grievant, management and steward. If the grievance is denied, the chief steward decides whether it should be appealed to the local facility's postmaster, who decides the matter at step 2 (Tr. 22–23, 185, 311–314). The Branch represents the grievant at the step 1 and 2 levels and maintains the file at these levels (Tr. 111, 119). If the postmaster denies the grievance, an appeal can be taken to step 3, where the NALC business agent then represents the grievant and takes possession of a duplicate grievance file with the original kept by the Branch (Tr. 24, 251, 256–257). The Postal Service's Regional Director for Employee and Labor Relations decides the step 3 appeal. Arbitration can then be requested after step 3, or there can be an appeal to step 4 (Zysk Exh. 1).

From 1995 to 1996, President Nusser and the other three officers of Branch 758 kept the grievance files in their homes. Beginning in June 1996, Nusser agreed to transfer any files pending at steps 1 or 2 to Brown's office in Troy, Michigan, if any grievant sought to review his file. Because there was never any such request, no files were ever sent to Brown's office, which is 14 miles north of downtown Detroit. Then, in early 1997, Nusser decided to relocate the steps 1 and 2 level files from the officers' homes to a storage facility (Tr. 275, 279–281,

293, 304, 342). Each grievance file typically contains a pre-printed folder, upon which the history of the grievance can be summarized (Zysk Exh. 1). Nusser would always orally tell a grievant what the status of his grievance was, if asked (Tr. 322–323).

As noted above, Zysk has filed grievances. After Moskal succeeded him as president, Zysk sent him a handwritten note in December 1994 requesting “copies of any pending grievances” because Moskal “wasn’t keeping me apprised” of the status thereof (GC Exh. 4; Tr. 28–30). Because Zysk received copies of only two partial files, he wrote another such request to Moskal on December 24, 1994 (GC Exh. 5). According to Zysk, Moskal said “I’m not giving them to you” (Tr. 32–37). So Zysk wrote to Moskal again on January 12, 1995 (GC Exh. 6). Then, Zysk filed a charge with the National Labor Relations Board on January 19, 1995, alleging that Branch 758 was refusing to process his grievances (GC Exh. 1(a)). Before February 1995, Pickett had filed just one grievance (Tr. 225). On January 25, 1995, he filed a charge as well, alleging that Moskal refused to process his grievance (GC Exh. 1(c)). On February 1, 1995, Zysk filed an amended charge, claiming that Branch 758 refused to provide copies of his grievances (GC Exh. 1(e)). Then, the General Counsel issued its first complaint on March 7, 1995 (GC Exh. 1(k)). But the complaint did not include the allegations about the Union’s failure to process grievances (U. Exh. 2). On March 30, 1995, a settlement was reached between Pickett and Branch 758 (GC Exh. 1(n)).<sup>1</sup> Then, on June 12, 1995, a settlement was reached with Zysk. The Union agreed to post a notice which stated the following:

WE WILL NOT refuse to provide employees who have requested them, with copies of their grievances.

WE WILL provide copies of grievances filed by Mark Zysk which were requested by him in December 1994 and January 1995.

Also, the following was agreed to:

#### STIPULATION

It is expressly understood that the instant Settlement Agreement does not constitute a settlement of the charges in any case other than Case No. 7–CB–10408(P). It is further expressly understood that by entering into this Settlement Agreement, no party waives any of its rights in Branch 529, National Association of Letter Carriers, Case No. 7–CB–9937(P), which case is currently pending before the National Labor Relations Board pursuant to exceptions filed by Charged Party NALC to the Administrative Law Judge’s decision which issued on September 29, 1994, ordering Charged Party NALC’s Branch 529 to provide copies of grievances to members upon request. It is agreed by the parties that if the Administrative Law Judge’s order is affirmed by order of the Board or enforced by final order of the Sixth Circuit Court of Appeals or, in the event a petition for certiorari is granted, in the United States Supreme Court, the Charged Parties will at that time immediately comply with the terms of the instant Settlement Agreement. If said Board order or final Court order denies enforcement, the charge being settled herein shall be dismissed by the Regional Director. It is understood that the Regional Director’s immediate approval of

the instant Settlement Agreement in no way compels or requires the Charged Parties’ compliance herewith until the prospective final ruling by the Board or the Sixth Circuit Court of Appeals or the United States Supreme Court, as discussed above.

[U. Exh. 1.]

Before the Board acted on the exceptions filed in the Branch 529 case, Nusser posted the notice and told Zysk in August 1995 that she was working on his request for files (Tr. 42–43, 318–319). He waited a month, received nothing, and wrote another note to Nusser on September 22, 1995, again requesting copies (GC Exh. 7). And he wrote her another letter on October 9, 1995 because there was apparently a problem with finding the numbers assigned to his grievances (GC Exh. 8). On November 30, 1995, the Board affirmed the administrative law judge’s decision in the Branch 529 case, and no appeal was filed. *Letter Carriers Branch 529*, 319 NLRB 879 (1995). Then, on December 7, 1995, Nusser sent Zysk a package of material consisting of:

the last action taken by the Branch and the result of the grievance if there was one present in the packet. This fulfills your request as interpreted by NLRB to me. . . .

(GC Exh. 9.) According to Zysk, this package contained only 12 of the 80 grievances then pending, and the 12 grievances were incomplete at that. Nusser told him “that’s all I have.” (Tr. 48–55.). So, Zysk wrote another request to Nusser on December 20, 1995 (GC Exh. 10).

Nusser wrote a letter to Zysk on January 7, 1996, stating that:

As to copies of all your grievance files I will be dedicating a set amount of time each week to making those copies.

(GC Exh. 11.) After receiving only a few more copies Zysk wrote a letter on February 4, 1996, to the Regional Office’s compliance officer complaining that Nusser was spending only 30 minutes a week on this task (GC Exh. 12; Tr. 58–60). Then, on March 1, 1996, Nusser wrote a letter to Zysk stating:

After careful consideration I feel that it would place an undue hardship on Branch 758 when taking into account the amount of money and time that would be spent investigating, researching, and copying the large number of grievances that you are requesting. The stewards of Branch 758 will supply you with a copy of future grievances and settlements as they become available.

(GC Exh. 13.) According to Nusser, in early 1996 Brown advised her not to give any more copies “because we were in litigation” (Tr. 324). Brown’s policy was not to give out grievance files to anyone because of possible confidential material therein. But the grievant could view specific portions of the file in the presence of an observer, and obtain copies for a reasonable fee (Tr. 254–255, 270). Thus, Nusser told Zysk in October 1996 that she would not provide him with any additional material on his 100 pending grievances (Tr. 64–65). So, Zysk wrote another note on November 4, 1996, again requesting copies (GC Exh. 14). According to Zysk, Nusser told him that all she had to do was notify him verbally of the status of his grievances (Tr. 73–74). And she reiterated that the sheer volume of grievances made copying difficult (Tr. 326–327). So, Zysk filed another charge on February 27, 1996 (GC Exh. 1(w)). According to Zysk, he has 120 pending grievances as of

<sup>1</sup> There is no written settlement agreement in the record.

mid-1997, of which he has received only 10 incomplete files (Tr. 75). Zysk testified that Nusser admitted in January 1997 that she had thrown out some of his old files (Tr. 81–82). Nusser also told him that he could not make copies of his files by himself (Tr. 107). Finally, Zysk testified that he needs the complete contents of his files in order to verify that the Union has been properly processing his grievances and to obtain compliance from the Postal Service regarding successful arbitrations (Tr. 65–68).

In November 1996, Robin Thomas, a letter carrier at the Southgate Post Office, received a copy of her arbitration decision from Nusser, without having to request it. This was the first time she had ever received any such copies (Tr. 122–125). In April 1997, Nusser called Zysk's wife to inform her that she had just won a step 3 grievance. Mrs. Zysk requested a copy of the award and received it a few days later (Tr. 129–130).

Turning to Kloock, he ceased active duty as a letter carrier in May 1994 (Tr. 142). In early 1995, Nusser gave several complete grievance files to Kloock to take home and review at his leisure. Kloock returned them a few days later (Tr. 348–349). On August 31, 1995, during his battle with the Postal Service over his soon-to-occur involuntary retirement, he wrote a letter to Branch 758 requesting all his grievances filed after May 1994 (GC Exh. 17). This information was important to him because he was no longer on the job and had no ready access to a union steward (Tr. 147). Also, he wanted to ascertain whether the Union was obtaining information from the Postal Service, such as medical reports, which was relevant to his quest to be reinstated as a letter carrier (Tr. 149–50). On September 6, 1995, Nusser replied in writing that Kloock should contact union Secretary Deborah Lower “concerning the grievance packets.” (GC Exh. 18). Lower told Kloock, however, that he could not have the complete files (Tr. 152–153, 174). So, Kloock filed a charge with the Board on October 3, 1995 (GC Exh. 1(q)). Also, Kloock filed a complaint in United States District Court on May 28, 1996 (GC Exh. 16). According to Kloock, he had to rely on the discovery process in that case to obtain the documents he requested from Branch 758 (Tr. 157).

Staley also requested “copies of all my current pending grievances” in a November 22, 1995 letter to Nusser (GC Exh. 22). And he renewed his request in a November 29, 1995 letter to Nusser (GC Exh. 23). Nusser responded on December 18, 1995, that she would provide him with these documents but was having trouble doing so because she did not have the “grievance numbers” (GC Exh. 24). Staley, however, knew the numbers of only a few of his grievances because the Union president assigns those numbers (Tr. 191). In response to his requests, Staley received only two complete files and two partial files, in December 1995 (GC Exhs. 25–27; Tr. 192–193, 196–197). So, Staley filed a charge on December 9, 1995 (GC Exh. 1(s)). He received nothing thereafter in the way of his files except for grievances filed after March 1997 (Tr. 194–195). Nusser told Staley that Branch 758 members could not visit her home, where the files were stored, to review them. Nusser also told him that nobody could have the files while there was litigation pending over access to the files (Tr. 204–206). Then, Staley saw a notice posted at the Wyandotte Post Office stating that people seeking copies of their files would have to travel to Troy (Tr. 203).

After he became a steward in February 1995, Pickett became an active filer of grievances on behalf of other letter carriers.

According to Pickett, this caused management to make his day-to-day job more difficult, causing him to file more grievances on behalf of himself (Tr. 225–227). Pickett asked Nusser for a copy of his grievance files in September 1995, and again in writing on December 10, 1995 (GC Exh. 20; Tr. 228–230). Secretary Lower informed him in an October 4, 1995 letter that Nusser had removed him as steward at Southgate (GC Exh. 28). Then, Nusser wrote on January 7, 1996, stating that she would provide the information as soon as possible, but that she was backed up with copying many other such requests (GC Exh. 21). Pickett then filed his charge on February 5, 1996, alleging, among other things, the Union's failure to supply copies of grievances and the Union's wrongful removal of him as steward (GC Exh. 1(u)). On March 18, 1996, however, the Union supplied Pickett with copies of 16 of the approximate 25 files he was seeking (GC Exh. 29; Tr. 231–232). He asked Nusser about the remainder but never received anything more (Tr. 233). Since moving to another post office in the territory of Branch 2184, Pickett receives any files he requests quickly. He conceded, however, that Branch 2184 has its own office and full-time officers (Tr. 234–235, 237–239).

### III. ANALYSIS

Unions which act in an exclusive representative capacity must fairly represent their members. *Miranda Fuel Co.*, 140 NLRB 181 (1962), enf. denied 326 F.2d 172 (2d Cir. 1963). One of a union's key duties toward its members is processing their grievances, and the Supreme Court held in 1967 that if a union fails to process grievances under circumstances that are “arbitrary, discriminatory, or in bad faith,” it breaches its duty of fair representation. *Vaca v. Sipes*, 386 U.S. 171 (1967).<sup>2</sup> However, a union must necessarily have broad discretion in deciding what grievances to pursue and how to pursue them, as long as these decisions are founded on good faith. See *Humphrey v. Moore*, 375 U.S. 335 (1964). Thus, a union's mere negligence in failing to file a grievance is not enough to constitute a violation of the Act. *Teamsters Local 692*, 209 NLRB 446 (1974).

That brings us to the question of how employees can find out whether a union fulfills its duty of fair representation within the above-discussed guidelines. It is well-settled that an employee may see hiring hall information maintained by a union to determine whether he has been treated fairly regarding job referrals, absent some substantial reason for refusing disclosure. *Operating Engineers Local 513*, 308 NLRB 1300 (1992). Likewise, an employee is entitled to receive a copy of the collective-bargaining agreement from the Union. *Law Enforcement & Security Officers Local 40B*, 260 NLRB 419 (1982). And, in the above-discussed case of *Branch 529*, supra, the Board held that an employee can obtain copies of his grievance file where the documents sought are “extremely limited” and the Union fails to raise any “substantial countervailing interest” in refusing to provide the copies. Further, the Board cautioned against arbitrary or bad-faith treatment by a union of its members.

In the presiding judge's view, the analysis of whether the Union should provide the four Charging Parties with copies of their grievance files should start with the following conclusion

<sup>2</sup> This standard has since been applied to the negotiation of, as well as the administration of, the collective-bargaining agreement. *Air Line Pilots v. O'Neill*, 499 U.S. 65 (1991).

reached by Administrative Law Judge Jacobs in the *Branch 529* case:

To refuse the very minimal request from an employee-member for a copy of [his or her] own grievance strikes me as wrong. . . .

Indeed, courts have long recognized the right of individuals to inspect documents held by fiduciaries, such as lawyers, where there is a "pressing necessity" for access thereto. See *In re Badger*, 9 F.2d 560 (2d Cir. 1925); *Finance Co. of Pennsylvania v. Charleston, C. & C.R. Co.*, 48 F. 45 (4th Cir. 1891).

Addressing the factors set forth by the Board in *Branch 529*, we are dealing here with hundreds of files<sup>3</sup> as opposed to the two pieces of paper involved in that case. But volume should have nothing to do with an employee's right to access his grievance files. As for copying those files, while the General Counsel takes no position on the question of who should pay, the presiding judge believes a common sense rule should apply: the party seeking the copies should pay for the copies. This is especially so here because Branch 758 has no copy machine, or free use of one, and the number of pages to copy is potentially voluminous.<sup>4</sup> Second, Respondent has failed to establish any countervailing interest in refusing to provide the files. Notwithstanding Brown's concern about confidential material in the files, such as medical reports and witness statements, Respondent made no showing that such material in fact exists in any of the four Charging Parties' files and that this material is so sensitive that it has to be secreted. Third, Respondent acted arbitrarily in its policy of file access/copying. For example, in early 1995, Nusser allowed Klock to take several files home. Then in late 1996, Nusser sent letter carrier Thomas, without her prior request, a copy of an arbitration award. And in early 1997, Nusser provided Mrs. Zysk with a copy of her requested award. By contrast, in September 1995, Union Secretary Lower wrote Klock that he could not have his complete files. In December 1995, after the Board's affirmance of the *Branch 529* case, Staley received only two complete and two partial files of his approximate 200. In March 1996 Pickett received only 16 of 25 of his files. Moreover, the Union never told Klock, Staley, or Pickett why they could not have their files. Lastly, Nusser wrote Zysk in March 1996 that he could have no more past files because of the volume thereof. And in October 1996, she denied him any pending files as well. Thus, it is concluded that the Union's disparate actions go beyond mere negligence.

Addressing a fourth factor discussed in *Branch 529*, the presiding judge finds serious good-faith problems with both sides of this case. At the outset, it must be recognized that the four Charging Parties are at odds with the current leadership of Branch 758. Indeed, the four Charging Parties are all friends,

Pickett was ousted as a steward by Nusser in 1995, and Staley was defeated in the 1996 race for president by Nusser. Regarding the Union's good-faith problems, it violated its own settlement agreement reached with the Regional Director in June 1995. That agreement specifically stated that if the Board affirmed the administrative law judge's decision in the *Branch 529* case, Branch 758 would "immediately" provide copies of grievances to "employees who have requested them," including Zysk's files requested in December 1994 and January 1995. The Board so affirmed on November 30, 1995, and no appeal was filed. Nevertheless, Nusser sent Zysk a letter on March 1, 1996, that no more pending grievance files would be sent to him. Disingenuously, Brown advised Nusser to send this letter because the *Branch 529* case was "in litigation." Turning to the Charging Parties' good-faith problems, it is true that Nusser once told the Branch 758 members that they could not review the grievance files while she stored them at her home up to early 1997. However, none of the Charging Parties ever asked Nusser a second time if they could merely look at their files. This reticence is in sharp contrast to the Charging Parties' multiple written requests of Nusser to receive copies of their files. Furthermore, none of the Charging Parties ever asked to see their complete files at Brown's office after June 1996, following Nusser's agreement to transfer those files to Brown for inspection if such a request was to be made. Finally, it is incredible that, before the trial of this case, there is no record evidence of any subpoena request made by any of the four Charging Parties to obtain their files. This puzzling reluctance to obtain the long sought-after grievance files is certainly at odds with the otherwise active conduct of all four Charging Parties at the trial, during which they introduced evidence and cross-examined witnesses.

Notwithstanding the intraunion politics permeating this case, the ostensible issue of access to grievance files remains. Thus, for the reasons discussed supra, it is concluded that Respondent violated Section 8(b)(1)(A) of the Act by failing to provide the four Charging Parties with access to their grievance files. However, because of the volume of grievances involved, it cannot be concluded that the Act was violated because of the Respondent's failure to provide copies to the Charging Parties.

Lastly, the General Counsel alleges in its complaint that Pickett was improperly removed as a union steward by Nusser. Specifically, it is alleged that because Pickett was a "de facto elected steward" by the members of Branch 758, he could only be removed by the members. The NALC constitution gives each branch the discretion whether to elect or appoint their stewards, and Branch 758's bylaws state that the "station representatives" (i.e. stewards) will be appointed by the president. While Moskal reluctantly appointed Pickett upon a vote by the members, the presiding judge is reluctant to label this a de facto election, thus changing the language of the bylaws. Accordingly, it cannot be concluded that Nusser was without the authority to dismiss Pickett. Moreover, her decision appears reasonable because of the near fisticuffs between Pickett and Moskal. Therefore, it cannot be concluded that Pickett's termination violated Section 8(b)(1)(A).<sup>5</sup>

<sup>3</sup> The General Counsel contends that Brown's estimate of the volume of grievances was inflated. The Respondent contends that Brown's count was too conservative. Upon a thorough review of the record, it is concluded that Brown's testimony on this subject is the best estimate of the number of grievances filed by Zysk, Klock, Staley, and Pickett. Indeed, he is the only witness to have researched all the numbers and his testimony about the research is straightforward.

<sup>4</sup> The General Counsel points to GC Exhs. 25, 26, and 27 (4 pages, 14 pages, and 14 pages, respectively) as being typical "thin" files sought by the Charging Parties. There is simply insufficient evidence in the record, however, to determine the average size of a grievance file.

<sup>5</sup> This entire matter is now moot because Pickett is no longer a member of Branch 758 and is thus ineligible to return to his position as steward there.

## CONCLUSIONS OF LAW

1. The United States Postal Service is subject to the jurisdiction of the National Labor Relations Board pursuant to 39 U.S.C. §1209(a).

2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(b)(1)(A) of the Act by refusing, since December 1994, to provide Mark Zysk, Keith L. Kloock, Harold R. Staley Jr., and Michael P. Pickett with access to their grievance files.

4. The General Counsel's allegations at paragraphs 22–24 of the complaint, regarding the dismissal of Pickett as a steward, are dismissed.

5. Respondent's acts, described in paragraph 3, above, constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## ORDER

Accordingly, IT IS ORDERED<sup>6</sup> that the Respondent, National Association of Letter Carriers, AFL–CIO and Branch 758, National Association of Letter Carriers, AFL–CIO, Wyandotte, Michigan, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to provide any employee or member with access to his or her grievance files.

(b) In any like or related manner restraining or coercing any employees or members in the exercise of the rights guaranteed them by Section 7 of the Act.

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<sup>6</sup> If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days of the date of this Order, provide Mark Zysk, Keith L. Kloock, Harold R. Staley Jr., and Michael P. Pickett with access to their grievance files.

(b) Provide copies of grievance files to these four individuals, if they so request, with the cost to be borne by the individual requesting the copies.

(c) Within 14 days after service by the Region, post copies of the attached notice marked "Appendix."<sup>7</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted, such as the Southgate, Wyandotte, and Riverview, Michigan post offices, assuming that the United States Postal Service furnishes such places to Respondent. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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<sup>7</sup> If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."